

Customs Bulletin

Regulations, Rulings, Decisions, and Notices
concerning Customs and related matters



and Decisions of the United States Court of Appeals for the Federal Circuit and the United States Court of International Trade

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No. 27

This issue contains:

U.S. Customs Service

T.D. 83-140 Through 83-142

Proposed Rulemaking

General Notice

U.S. Court of International Trade

Slip Op 83-54 Through 83-57

Protest Abstracts P83/159 Through P83/182

Reap Abstracts R83/485 Through R83/491

THE DEPARTMENT OF THE TREASURY
U.S. Customs Service

NOTICE

The abstracts, rulings, and notices which are issued weekly by the U.S. Customs Service are subject to correction for typographical or other printing errors. Users may notify the U.S. Customs Service, Logistics Management Division, Washington, D.C. 20229, of any such errors in order that corrections may be made before the bound volumes are published.

U.S. Customs Service

Treasury Decisions

(T.D. 83-140)

Bonds

Approval and discontinuance of Carrier's Bonds, Customs Form 3587

Bonds of carriers for the transportation of bonded merchandise have been approved or discontinued as shown below. The symbol "D" indicates that the bond previously outstanding has been discontinued on the month, day, and year represented by the figures which follow. "PB" refers to a previous bond, dated as represented by figures in parentheses immediately following, which has been discontinued. If the previous bond was in the name of a different company or if the surety was different, the information is shown in a footnote at the end of the list.

Dated: June 17, 1983.

Name of principal and surety	Date of bond	Date of approval	Filed with district director/area director/amount
Advance Transportation Co., 5005 S. Sixth St., P.O. Box 2011, Milwaukee, WI; motor carrier; U.S. Fidelity & Guaranty Co. (PB 3/7/68) D 5/21/83 ¹	Feb. 15, 1983	May 21, 1983	Milwaukee, WI \$25,000
American Machinery Movers, Inc., 247 Iris Ave., Jefferson, LA; motor carrier; Fidelity & Deposit Co. of MD.	May 5, 1983	May 10, 1983	New Orleans, LA \$25,000
B-25 Cartage Corp., P.O. Box 595090, Miami, FL; motor carrier; Old Republic Ins. Co.	Dec. 3, 1983	May 18, 1983	Miami, FL \$50,000
B & P Motor Express CO., 825 W. Federal St., Youngstown, OH; Peerless Ins. Co. D 5/19/83	Feb. 12, 1983	Mar. 18, 1982	Baltimore, MD \$25,000
Bender Transportation, P.O. Box 11430, 500 Evans Ave., Reno, NV; motor carrier; South Carolina Ins. Co.	Mar. 29, 1983	May 23, 1983	San Francisco, CA \$50,000
Biscay Foreign Trade Warehouse, Inc., 216 N.E. 11th St., Miami, FL; motor carrier; St. Paul Fire & Marine Ins. Co. D 4/13/83	July 1, 1983	Jan. 20, 1981	Miami, Fl \$50,000

Name of principal and surety	Date of bond	Date of approval	Filed with district director/area director/amount
Buske Lines, Inc., 123 W. Tyler, P.O. Box 349, Litchfield, ILL; motor carrier; St. Paul Fire & Marine Ins. Co. (B 5/5/80) D 6/2/83	May 5, 1983	June 2, 1983	Detroit, MI \$50,000
Coastal Trailer Repairs, Inc., 9414 N.E. Vancouver Way, Portland, OR; motor carrier; Peerless Ins. Co.	Apr. 13, 1983	May 25, 1983	Portland, OR \$25,000
Colonial Refrigerated Transportation, Inc., P.O. Box 22168, Knoxville, TN; motor carrier; Reliance Ins. Co.	Apr. 1, 1983	May 10, 1983	Houston, TX \$25,000
Consolidated Express, Inc., Ave. Campo Rico Este, Edificio Girafa, Sabana Gardens, Ind. Park, Carolina, PR; motor carrier; Ins. Co. of North America. D 5/19/83	Feb. 1, 1971	Mar. 1, 1971	San Juan, PR \$25,000
Consolidated Freightways Corp. of DE & its div., & CF Air Freight, Inc., and CF Arrowhead Services, CF Arrowhead Services, Inc., Con-Way Eastern Express, Inc., Con-Way Western Express, Inc., Con-Way Central Express, Inc., CF Forwarding, Inc., Consolidated Freightways Export-Import Services, Inc., all DE Corp., 175 Linfield Dr., Menlo Park, CA; motor carrier; Safeco Ins. Co. of MD. (PB 10/6/81) D 6/6/83 ²	Mar. 21, 1983	June 6, 1983	Portland, OR \$50,000
Eazor Express, Inc., Eazor Square, Pittsburgh, PA; motor carrier; Union Indemnity Ins. Co. of NY. D 4/18/83	July 13, 1981	Oct. 8, 1981	Philadelphia, PA \$100,000
Esteban Nazario, Inc., P.O. Box 3681, Mayaguez, PR; motor carrier; Puerto Rican-American Ins. Co. D 5/19/83	Feb. 18, 1971	Mar. 3, 1971	San Juan, PR \$25,000
Florida Towing Co., Suite 3206, Independence Square, Jacksonville, FL; water carrier; St. Paul Fire & Marine Ins. Co.	May 6, 1983	May 6, 1983	Charleston, SC \$50,000
Hunt Super Service, Inc., Rt. 50 N., Box 270, Bradley, IL; motor carrier; The Travelers Indemnity Co.	May 17, 1983	May 23, 1983	Chicago, IL \$25,000
Jonel, Inc., dba Will-Cin Transportation Co., 350 Carlson Blvd., Richmond, CA; motor carrier; Fidelity & Deposit Co. of MD. (PB 7/17/81) D 4/25/83 ³	Apr. 26, 1983	May 23, 1983	San Francisco, CA \$25,000
Kenmore Transportation Co., 22 Eskow Rd., Worcester, MA; motor carrier; The Hanover Ins. Co. (PB 5/6/77) D 5/18/83 ⁴	May 6, 1983	May 18, 1983	Boston, MA \$25,000
McGregor Sea & Air Services Ltd., 1588 Gilbreath Rd., Burlingame, CA; air carrier; Washington International Ins. Co. (PB 3/17/77) D 5/10/82 ⁵	Apr. 9, 1982	May 10, 1982	San Francisco, CA \$100,000

Name of principal and surety	Date of bond	Date of approval	Filed with district director/area director/amount
Maritime-Ontario Freight Lines, Ltd., 3505 Kempt Rd., Halifax, Nova Scotia, Canada; motor carrier; U.S. Fidelity & Guaranty Co. D 5/31/83	Mar. 21, 1968	Apr. 24, 1968	Portland, ME \$25,000
Mattan Transport Inc., 363 Arvin Ave., Stoney Creek, Ontario, Canada; motor carrier; Old Republic Ins. Co. D 5/20/83	Feb. 6, 1981	Feb. 9, 1981	Detroit, MI \$50,000
Quaker Transit Co., Inc., 901 Poplar St., Philadelphia, PA; motor carrier; Firemen's Ins. Co. of Newark, NJ. (PB 3/1/79) D 3/1/83 ⁶	Mar. 1, 1983	Mar. 1, 1983	Philadelphia, PA \$25,000
Redwing Refrigerated, Inc., 9831 S. Orange Ave., Taft, FL; motor carrier; The Aetna Casualty & Surety Co. D 5/19/83	Sept. 13, 1979	Nov. 20, 1979	Tampa, FL \$25,000
Ric's Transfer Co., Inc., 1530 Utah Ave., So., Seattle, WA; motor carrier; Mid-Century Ins. Co. (PB 5/1/77) D 5/9/83 ⁷	May 1, 1983	May 9, 1983	Seattle, WA \$25,000
SEA/MAR Services, Inc., 2111 N. Pace Blvd., Pensacola, FL; motor carrier; Fidelity & Deposit Co. of MD.	Apr. 21, 1983	May 20, 1983	Mobile, AL \$25,000
Shaker Express, P.O. Box 2430, San Diego, CA; motor carrier; Fireman's Fund Ins. Co. (PB 8/13/82) D 5-23-83 ⁸	May 6, 1983	May 23, 1983	San Diego, CA \$50,000
Steinbecker Brothers Inc., 1985 2nd Ave., Greeley, CO; motor carrier; Allied Fidelity Ins. Co. D 5/25/83	Feb. 15, 1982	Mar. 16, 1982	St. Louis, MO \$25,000
Wall Delivery Service, Inc., 3501 Manchester Dr., Charlotte, NC; motor carrier; American Manufacturers Mutual Ins. Co.	May 26, 1983	May 31, 1983	Wilmington, NC \$25,000
Will-Cin Transportation Co.—See Jonel, Inc.			
Yowell Transportation Services, Inc., 1840 Cardington Rd., Dayton, OH; motor carrier; St. Paul Fire & Marine Ins. Co. (PB 9/7/82) D 5/27/83 ⁹	May 13, 1983	May 27, 1983	Cleveland, OH \$50,000

¹ Surety is The Aetna Casualty & Surety Co.² Principal is Consolidated Freightways Corp. of DE & its div. CF Air Freight, Inc., Corp. of DE & CF Arrowhead Services.³ Surety is Fireman's Fund Ins. Co.⁴ Principal is Kenmore Transportation Co., Inc.; Surety is Hartford Accident & Indemnity Co.⁵ Principal is McGregor Swire Air Services Ltd.; Surety is St. Paul Fire & Marine Ins. Co.⁶ Surety is Aetna Casualty & Surety Co.⁷ Surety is Great American Ins. Co.⁸ Surety is Transamerica Ins. Co.⁹ Surety is Mid-Century Ins. Co.

BON-3-03

GEORGE C. STEUART
(For Marilyn G. Morrison, Director,
Carriers, Drawback and Bonds Division).

(T.D. 83-141)

19 CFR Parts 10 and 177

Temporary Importations Under Bond

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Rule related notice.

SUMMARY: This document advises the public of the procedures that Customs will follow in processing requests for duty-free entry of foreign railroad equipment imported temporarily into the United States to meet an emergency. Under the Tariff Schedules of the United States, locomotives and other railroad equipment may be brought temporarily into the United States for use in transportation other than in international traffic when the Secretary of the Treasury finds that the temporary use of foreign railroad equipment is necessary to meet an emergency. There must be an administrative finding that an emergency exists and that the temporary use of foreign railroad equipment is needed to overcome that emergency. This notice provides guidelines on the types of evidence that should be presented with a request for duty-free entry. This will enable Customs to reduce the time needed in deciding the request and to process these requests more efficiently.

EFFECTIVE DATE: June 24, 1983.

FOR FURTHER INFORMATION CONTACT: William G. Rosoff, Carriers, Drawback and Bonds Division, U.S. Customs Service, 1301 Constitution Avenue, NW, Washington, D.C. 20229 (202-566-5856).

SUPPLEMENTARY INFORMATION:

BACKGROUND

Under normal conditions, foreign railroad equipment in use on a continuous route crossing the border into the United States is considered to be an item of international traffic and shall be admitted without formal entry or the payment of duty.

However, when it is deemed necessary due to an emergency situation to use foreign railroad equipment between points in the United States, it is no longer considered an item of international traffic but still can be admitted temporarily free of duty under bond in accordance with the provisions of headnote 1, Subpart C, Part 5, Schedule 8, Tariff Schedules of the United States (TSUS) (19 U.S.C. 1202). This headnote provides that articles described in

subpart C, when not imported for sale or for sale on approval, may be admitted into the United States without the payment of duty, under bond for their exportation within one (1) year from the date of importation. This period, in the discretion of the Secretary of the Treasury, may be extended, upon application, for one or more further periods which, when added to the initial one (1) year, shall not exceed a total of three (3) years. Item 864.40, of Subpart C, Part 5, Schedule 8, TSUS, provides for duty free entry for the following:

Locomotives and other railroad equipment brought temporarily into the United States for use in clearing obstructions, fighting fires, or making emergency repairs on railroads within the United States, or for use in transportation otherwise than in international traffic when the Secretary of the Treasury finds that the temporary use of foreign railroad equipment is necessary to meet an emergency.

The provision which permits the duty-free entry of railroad equipment was added by section 4 of the Customs Administrative Act of 1938 (Customs Administrative Act of 1938, sec. 4, 52 Stat. 1079). The purpose was to allow the Secretary of the Treasury to permit the temporary entry of foreign railroad equipment to relieve acute congestions in rail traffic which cannot be cleared by available domestic equipment in time to prevent serious loss or suffering. See Hearings before the House Committee on Ways and Means on H.R. 6738, 75th Cong., 132 (1937).

By Treasury Department Order No. 165, Revised (T.D. 53654); Customs Delegation Order No. 1 (Revision 1) (T.D. 69-126), as amended by T.D. 72-41, T.D. 72-42, and T.D. 72-321, the authority delegated to the Secretary of the Treasury by the statute has been redelegated to the Director, Carriers, Drawback and Bonds Division, U.S. Customs Service. Section 177.2 Customs Regulations (19 CFR 177.2), contains the procedures for obtaining administrative rulings from Customs. Section 177.2(d) sets forth the information that would be needed to establish the fact of an emergency requiring immediate consideration. There must be an administrative finding that an emergency exists and that the temporary use of foreign railroad equipment is needed to overcome that emergency. The courts have held that an administrative decision must be supported by substantial evidence. *University of Miami v. U.S.*, 64 C.C.P.A. 174, 176 (1977) and *Yale University and Brown University v. U.S.*, 65 C.C.P.A. 97, 103, 104 (1977).

REQUESTS FOR A RULING ON ITEM 864.40, TSUS

To reduce delay in the processing of requests for duty-free entry under these conditions, requests for a ruling on the applicability of item 864.40, TSUS, should provide the following information:

1. Name of Railroad and/or importer.

2. Ownership, type, and number of the items of railroad equipment to be imported.
3. Duration of importation period.
4. Evidence showing the existence of an emergency such as news reports.
5. Evidence that domestic equipment would not be available in time. This could be shown by unsuccessful and/or unsatisfied efforts to obtain sufficient equipment from other domestic railroads or from domestic railroad equipment manufacturers.

Because the statutory scheme to which these guidelines apply is triggered only by the occurrence of an emergency, there have been few requests for exemption under the statute in recent years. For example, there were only two such requests during 1982. During 1981 there were five requests and during 1980 there were four requests. Accordingly, since these information collection guidelines contemplate that nine or fewer persons will apply for the duty-free exemption each year, they are not subject to the requirements of section 3507 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chap. 35).

While Customs will make every effort to expedite requests of an emergency nature, if there is no evidence on which to base an administrative decision, Customs has no other option than to make an independent investigation of the facts. That will necessarily add to the time for processing such a request. Consequently, it would be in the best interests of all parties to insure that accurate detailed evidence as to both the emergency and the basis for allowing duty-free entry of foreign railroad equipment to meet that emergency is presented with the request.

AUTHORITY

R.S. 251, as amended, sec. 624, 46 Stat. 759, Customs Administrative Act of 1938, sec. 4, 52 Stat. 1079, 77A Stat. 14; (5 U.S.C. 301, 19 U.S.C. 66, 1202, 1624 (General Headnote 11, 12, Tariff Schedules of the United States)).

DRAFTING INFORMATION

The principal author of this document was James S. Demb, Regulations Control Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

Dated: April 28, 1983.

ALFRED R. DE ANGELUS,
Acting Commissioner of Customs.

[Published in the Federal Register, June 24, 1983 (48 FR 28982)]

(T.D. 83-142)

Tuna Fish—Tariff-Rate Quota

The tariff-rate quota for the calendar year 1983, on tuna classifiable under item 112.30, Tariff Schedules of the United States, (TSUS)

AGENCY: U.S. Customs Service, Department of Treasury.

ACTION: Announcement of the quota quantity for tuna for calendar year 1983.

SUMMARY: Each year the tariff-rate quota for tuna fish described in item 112.30, (TSUS), is based on the U.S. pack of canned tuna during the preceding calendar year.

EFFECTIVE DATES: The 1983 tariff-rate quota is applicable to tuna fish entered, or withdrawn from warehouse, for consumption during the period January 1 through December 31, 1983.

FOR FURTHER INFORMATION CONTACT: William J. Wagner III, Head, Quota Section, Special Operations Branch, Duty Assessment Division, Office of Commercial Operations, U.S. Customs Service, Washington, D.C. 20229 (202-566-8592).

It has now been determined that 91,903,800 pounds of tuna may be entered for consumption or withdrawn from warehouse for consumption during the calendar year 1983, at the rate of 6 per centum ad valorem under item 112.30, (TSUS). Any such tuna which is entered, or withdrawn from warehouse, for consumption during the current calendar year in excess of this quota will be dutiable at the rate of 12.5 per centum ad valorem under item 112.34, (TSUS).

(QUO-2-CO:T:D:SO)

Dated: June 16, 1983.

DON KELLY
(For William von Raab,
Commissioner of Customs).

[Published in the Federal Register, June 23, 1983 (48 FR 28779)]

U.S. Customs Service

Proposed Rulemaking

19 CFR Part 24

Proposed Customs Regulations Amendment Relating to Assessment and Collection of Certification Fees

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the Customs Regulations to increase from 20 cents to \$4.00, the fee Customs charges for furnishing an official certification. Often referred to as a delivery verification, these certificates are Customs official acknowledgement that certain merchandise was landed in the United States from a foreign country and provides information to the requesting party, usually the shipper, as to the disposition of the merchandise. If adopted, this change would permit Customs to maintain its present service of providing official certificates for the trade community at a fee commensurate with the actual cost of the service rendered.

DATE: Comments must be received on or before August 22, 1983.

ADDRESS: Written comments (preferably in triplicate) should be addressed to the Commissioner of Customs, Attention: Regulations Control Branch, U.S. Customs Service, 1301 Constitution Avenue, NW., Room 2426, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Herb Geller, Duty Assessment Division, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229 (202-566-5307).

SUPPLEMENTARY INFORMATION:

BACKGROUND

As a service to the trade community, Customs routinely issues official certificates such as certificates of landing and disposition of merchandise arriving in the United States from a foreign country. This particular certificate, which is often referred to as a "delivery verification", is Customs official acknowledgement that certain merchandise was landed in the United States and provides infor-

mation to the requesting party, usually the shipper, as to disposition of the merchandise. Unless otherwise prescribed by law, a fee of 20 cents is charged for each certificate issued, as required by section 24.12(a)(2), Customs Regulations (19 CFR 24.12(a)(2)). This change does not concern certification or navigation fees relating to vessel services which are provided for in section 4.98(a), Customs Regulations (19 CFR 4.98(a)).

By Circular ENT-1-EV, dated December 14, 1965, Customs personnel were advised of two methods of verifying the landing and disposition of imported merchandise. Verification may be accomplished on Customs Form 3227, "Certificate of Disposition of Imported Merchandise", or on an annotated copy of the inward foreign air or vessel manifest, prepared by the requestor. Also, verification may be made on Department of Commerce Form 647P, "Delivery Verification Certificate".

In June 1982, Customs Headquarters surveyed the Customs Regions to determine the volume and cost of processing "delivery verification" requests. The survey revealed that nationwide there are approximately 21,500 such requests processed annually. Estimates of cost varied widely depending upon the extent and degree of difficulty of the research performed in locating the information requested. For example, at one port the verification procedure takes two forms: (1) Verification requests on Customs Form 3227 received at the time of entry, in which case immediate verification of landing and disposition is made at little or no cost; and (2) requests received after entry, which require a Customs employee to locate the entry and verify the information at a substantially higher cost. Nationwide, the cost of processing delivery verifications ranged from a high of \$12.00 per certificate, in those cases which required extensive research, to a low of \$1.00, when no research was done. The average cost to Customs (i.e., research, retrieval of documents, actual certification, and collection of the 20 cent fee) for processing each request was estimated to be \$4.00.

Some Customs ports were in favor of eliminating the delivery verification procedures entirely citing budgetary and personnel restraints. Some ports wished to retain the current procedures but increase the fee to an amount commensurate with the cost of the service performed. Other ports wished to eliminate the current procedures and adopt less costly methods of verification. Nevertheless, all agreed that the current fee of 20 cents is too low for the service performed.

While the issuance of delivery verification certificates is clearly not an essential Customs function or requirement, Customs believes that it provides a valuable service to the trade community and therefore should be retained. If this service were to be discontinued, as suggested by some ports, there would be no practical means for the shipper to determine the date of landing and disposition of the merchandise. For example, the information may be re-

quired to satisfy the exporter's bond, obtain drawback from a foreign government, resolve disputes with the carrier over loss or damage to the merchandise or merely be required by a foreign government for statistical or other purposes.

After a thorough review of this matter, Customs is of the opinion that the present service of providing official certificates for the trade community should be continued, but that the recipients of the service should pay a fee commensurate with the service rendered. Accordingly, Customs proposes to increase the certification fee from 20 cents to \$4.00. Further, inasmuch as the cost of providing the official certificates is based on the actual current costs to Customs and these costs are subject to change periodically, it is also proposed to provide a procedure for periodic increases. This would be accomplished by periodically revising the certification fee to reflect increased costs. The public would be advised of any increase by publication of a general notice in the Federal Register and the Customs Bulletin setting forth the revised certification fee. The published revised fee would remain in effect until changed.

EXECUTIVE ORDER 12292

Because this document will not result in a regulation which would be a "major" rule as defined by section 1(b) of E.O. 12292, a regulatory impact analysis and review as prescribed by section 3 of the E.O. is not required.

REGULATORY FLEXIBILITY ACT

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis are not applicable to the proposal because the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. Although the current certification fee would be increased substantially, it is estimated that the aggregate increased cost to the trade community would be \$81,700 (i.e., based on Customs issuance of 21,500 certification requests annually times the \$3.80 increase). It has been determined that this increase would not result in a "significant economic impact" under the Act.

Accordingly, it is hereby certified under the provisions of section 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)) that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities.

COMMENTS

Before adopting this amendment, consideration will be given to any written comments that are submitted timely to the Commissioner of Customs. Comments submitted will be available for public inspection in accordance with section 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the

hours of 9:00 a.m. and 4:30 p.m. at the Regulations Control Branch, U.S. Customs Service, 1301 Constitution Avenue, NW., Room 2426, Washington, D.C. 20229.

DRAFTING INFORMATION

The principal author of this document was Jesse V. Vitello, Regulations Control Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

AUTHORITY

The amendment is proposed under the authority of R.S. 251, as amended (19 U.S.C. 66), 31 U.S.C. 9701.

LIST OF SUBJECTS IN 19 CFR PART 24

Customs duties, collections, certification fees, and imports.

PROPOSED AMENDMENT

It is proposed to revise section 24.12(a)(2), Customs Regulations (19 CFR 24.12(a)(2)), to read as follows: 24.12 Customs fees; charges for storage.

(a) * * *

(2) Customs shall charge and collect a fee for furnishing an official certification. The fee shall be revised periodically by publication of a general notice in the Federal Register and CUSTOMS BULLETIN setting forth the revised fee. The published revised fee shall remain in effect until changed.

ALFRED R. DE ANGELUS,
Acting Commissioner of Customs.

Approved: June 7, 1983.

JOHN M. WALKER, Jr.,
Assistant Secretary of the Treasury.

[Published in the Federal Register, June 23, 1983 (48 FR 28671)]

U.S. Customs Service

General Notice

19 CFR Part 177

Tariff Classification of Footwear Known as "Rubber Duckies"

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of proposed change of practice; solicitation of comments.

SUMMARY: Customs has determined that there is an established and uniform practice with respect to the tariff classification of certain imported footwear known as "Rubber Duckies." Customs is proposing a change in the tariff classification of the merchandise which, if adopted, would result in the imposition of a lower rate of duty. Because this matter is of sufficient importance to involve the interests of the domestic industry, this notice invites public comments on the matter before any change is made.

DATE: Comments must be received on or before August 22, 1983.

ADDRESS: Comments (preferably in triplicate) should be addressed to the Commissioner of Customs, Attention: Regulations Control Branch, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Donald F. Cahill, Classification and Value Division, U.S. Customs Service, 1301 Constitution Avenue, NW., Room 2426, Washington, D.C. 20229.

SUPPLEMENTARY INFORMATION:

BACKGROUND

This document pertains to the tariff classification of certain footwear known as "Rubber Duckies." More specifically, the merchandise involved is a ladies "Rubber Ducky" with a rubber/plastic molded bottom and a trimmed leather top line extending downward one inch to one and five-eighths inches and stitched to a molded bottom.

PROPOSED CHANGE OF PRACTICE

There is an established and uniform practice of classifying, for tariff purposes, the subject footwear under the provision for other footwear which is over 50 percent by weight of rubber or plastics and is designed to be worn over, or in lieu of, other footwear as a protection against water, oil, grease, or chemicals, or cold or inclement weather, in item 700.57, Tariff Schedules of the United States (TSUS; 19 U.S.C. 1202), at a Column 1 rate of duty of 37.5 percent ad valorem. This practice is based upon: (1) uniform liquidations at various ports of entry; and (2) Customs Ruling 800025, dated February 18, 1981, and published in the Customs Bulletin as C.S.D. 81-183 (15 C.B. 1095). Customs is proposing to change its practice such that the subject footwear would be classified under the provision for footwear of leather for other persons valued over \$2.50 per pair, in item 700.45, TSUS, at a Column 1 rate of duty of 10 percent ad valorem.

The proposed change would be based upon a finding that the tongue or flap of the footwear at issue, which extends upward from the top line of the shoe, should be included in the computation of the exterior surface of the upper, thereby causing the exterior surface to be over 50 percent leather and excluding the footwear from classification under item 700.57, TSUS.

In Customs Ruling 051937, dated June 6, 1977 (Internal Advice Request No. 28/77), and Customs Ruling 053769, dated January 31, 1978 (Decision on Application for Further Review of Protest No. 14016000151), it was stated that "the tongue, though part of the upper, is not part of the exterior surface thereof." In Ruling 051937, Customs stated that "the exterior surface area of the upper is whatever is visible and tactile on the surface, excepting such things as buttons, strips and other loosely attached appurtenances." In Customs Ruling 052768, dated January 16, 1978, it was stated that "in a 'U' throat or Bal pattern type of footwear the tongue is not part of the exterior surface area of the upper. The tongue in the blucher type of footwear is counted as part of the exterior surface area up to a point at the bottom of the lowest eyelet."

In those cases where the tongue was held not to be part of the exterior surface area of the upper, it was on a plane lower than a portion of the upper, and was partially or wholly covered by laces and eyelet facings or stays.

Customs is proposing this change of practice, and a finding that the tongue or flap of the subject footwear should be included in the computation of the exterior surface of the upper, because the leather tongue or flap is not covered by any portion of the upper when the shoe is tied, and because the entire surface of the tongue or flap is visible and tactile.

AUTHORITY

Because Customs believes that the proposed change of practice is of sufficient importance to involve the interests of the domestic industry, Customs is giving interested parties notice and an opportunity to comment in accordance with section 177.10(c)(1), Customs Regulations (19 CFR 177.10(c)(1)).

COMMENTS

Consideration will be given to any written comments timely submitted to the Commissioner of Customs. Comments submitted will be available for public inspection in accordance with section 103.11(b), Customs Regulations (19 CFR 103.11(b)), on normal business days between the hours of 9:00 a.m. and 4:30 p.m. at the Regulations Control Branch, Headquarters, U.S. Customs Service, 1301 Constitution Avenue, NW., Room 2426, Washington, D.C. 20229.

DRAFTING INFORMATION

The principal author of this document was Gerard J. O'Brien, Jr., Regulations Control Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

ALFRED R. DE ANGELUS,
Acting Commissioner of Customs.

Approved: June 7, 1983.

JOHN M. WALKER, Jr.,
Assistant Secretary of the Treasury.

[Published in the Federal Register, June 23, 1983 (48 FR 28673)]

United States Court of International Trade

One Federal Plaza

New York, N.Y. 10007

Chief Judge

Edward D. Re

Judges

Paul P. Rao
Morgan Ford
Frederick Landis
James L. Watson

Bernard Newman
Nils A. Boe
Gregory W.
Carman

Senior Judges

Herbert N. Maletz

Samuel M. Rosenstein

Clerk

Joseph E. Lombardi

Decisions of the United States Court of International Trade

(Slip Op. 83-54)

AMERICAN SPRING WIRE CORP., ET AL., PLAINTIFFS *v.* UNITED
STATES, DEFENDANT, and HAGGIE LIMITED, INTERVENOR

Court No. 82-6-00881

Before MALETZ, Senior Judge.

Opinion and Order

(Dated June 10, 1983)

Eugene L. Stewart, Terence P. Stewart, Kathleen T. Weaver and Roger Yochelson for the plaintiffs.

J. Paul McGrath, Assistant Attorney General; *David M. Cohen*, Director, Commercial Litigation Branch (*Francis J. Sailer* on the brief), for the defendant.

Busby, Rehm and Leonard (*Larry E. Klayman* on the brief) for intervenor Haggie Limited.

MALETZ, Senior Judge: Plaintiffs have filed a motion for discovery of confidential information subject to judicial protective order. The documents sought by plaintiffs are verification data compiled by the International Trade Administration of the Department of Commerce in the course of its countervailing duty investigation of prestressed concrete steel wire strand imported from South Africa.

The starting point for analysis of the motion for discovery of confidential information is section 516A(b)(2)(B) of the Tariff Act of 1930, as amended, 19 U.S.C. § 1516a(b)(2)(B) (Supp. IV 1980), which provides:

Confidential or privileged material

The confidential or privileged status accorded to any documents, comments, or information shall be preserved in any action under this section. Notwithstanding the preceding sentence, the court may examine, in camera, the confidential or privileged material, and may disclose such material under such terms and conditions as it may order.

By its terms this provision vests in the court discretion in determining whether to release confidential documents to parties involved in countervailing duty cases. In exercising its discretion, however, the court is guided by the following three considerations: (1) the need of the litigants for data used by the Government in order to respond adequately to subsidy findings, (2) the need of the Government in obtaining confidential information from businesses in future proceedings, and (3) the need of the foreign manufacturer to protect from disclosure information which, in the hands of a competitor, might injure its relative position in the industry. See, e.g., *Roquette Freres v. United States*, 4 CIT—, 554 F. Supp. 1246, 1248 (1982).

With these considerations in mind the court must then balance "a party's need for the information sought against the public interest in protecting confidential business information, recognized by section 516A(b)(2)(B) and inherent in the administrative authority's ability to effectively perform its investigative duties" under the countervailing duty law. *Nakajima All Co. v. United States*, 2 CIT 170, 174 (1981). Each case must, of course, be considered in light of its particular facts and circumstances in deciding whether confidential business data should be disclosed. Compare *Committee of U.S. Rayon Producers v. United States*, 3 CIT 177, Slip Op. 82-41 (May 27, 1982) (confidential verification exhibits ordered disclosed);

Japan Exlan Co. v. United States, 1 CIT 286 (1981) (confidential information requested several years old, so that disclosure would not harm competitive position of companies submitting information); *Rhone Poulenc, Inc. v. United States*, 1 CIT 116 (1981) (where information requested related directly to assessment of material injury, disclosure required); *Atlantic Sugar Ltd. v. United States*, 85 Cust. Ct. 128, 129, C.R.D. 80-14 (1980) (disclosure of document ordered where "plaintiffs' need for it goes beyond mere curiosity or a vague groping for clues"); and *Connors Steel Co. v. United States*, 85 Cust. Ct. 112, 113, C.R.D. 80-9 (1980) (in order for litigant "to fully prepare and present its legally authorized challenge to an administrative material," disclosure ordered) with *Roquette Freres v. United States*, 4 CIT—, 554 F. Supp. 1246 (1982) (since statistical data containing production capacity, customers and techniques not directly relevant to administrative determination, disclosure denied); *Armco, Inc. v. United States*, 1 CIT 131 (1981) (certain sources of supply to be protected from disclosure); and *Connors Steel Co. v. United States*, 85 Cust. Ct. 132, C.R.D. 80-17 (1980) (need for disclosing confidential data to economic expert not shown, disclosure denied).

Having examined *in camera* each of the confidential documents in question, the court is of the view that all of the documents requested by plaintiffs should be made available to them, with the exception of the documents described as "Invoices," appearing at pages 1655-1658 of the administrative record. Inasmuch as these latter documents contain customer-related information the court concludes that the need of the intervenor in protecting from disclosure information which, in the hands of plaintiffs, might injure its relative position in the industry outweighs plaintiffs' need for those documents in order to respond adequately to the Government's subsidy findings. The court believes that these documents are not directly relevant to the administrative determinations. In any event, they would be of marginal assistance to plaintiffs in responding to the Government's countervailing duty determination.

As for the balance of the documents sought by plaintiffs, the court is unable to see how plaintiffs would be able to meaningfully challenge the Government's findings in this action without them. Plaintiff's need for such documents in the circumstances of this case clearly outweighs the competing considerations of guarding confidential business information so as not to impair the Government's ability to compile such data in future cases and to protect the competitive position of the foreign manufacturer which furnished the data in the first place.

Intervenor contends that plaintiffs have failed to particularize their need for the verification data and that, for that reason, disclosure should be denied. However, this contention was rejected in the *Atlantic Sugar* decision, where the court stated:

At this preparatory stage, to require plaintiffs to make an exact demonstration of how the contents of this document will support their attack on the administrative determination would, in effect, require the court to make an advance judgment of the existence of substantial evidence for those determinations. Aside from demanding impossible prescience from the plaintiffs such an inquiry would result in a distorted and piecemeal judicial review.

Id., 85 Cust. Ct. at 129.

Accordingly, upon reading and filing plaintiffs' motion for discovery of confidential information subject to judicial protective order, and defendant's and intervenor's responses thereto; and

Upon considering the nature of the confidential exhibits and balancing plaintiffs' need for these exhibits against the public interest in protecting confidential information in order not to impair the ability of the administrative agency to collect confidential verification data of this type in the future; and

Having concluded that plaintiffs' need for certain of the confidential exhibits in question outweighs the need in the public interest for withholding disclosure of these exhibits;

It is therefore ORDERED:

1. That plaintiffs' motion for discovery of confidential information subject to judicial protective order is granted to the extent indicated herein and denied in all other respects; and
2. That a true, accurate and complete copy of the following confidential exhibits in the administrative record, together with English translations, shall be made available to plaintiffs by defendant within ten (10) days of the entry of this order under the terms of a protective order mutually agreeable to the parties:¹

ADMINISTRATIVE RECORD

Page	Description
a.... 738-757	Questionnaire Response
b.... 1628-1636	Verification Report and Exhibits
c..... 1637-1648	Calculations
d.... 1683-1701	Export Incentives Category A or B Documents
e.... 1709-1716	Documents accompanying Finance Charges Aid Scheme Description
f.... 1912	Commerce Rod Price Calculation
g.... ² 1913	Letter from Haggie to Busby regarding rod purchases from ISCOR
h.... ³ 1914	Chart of average cost of rod purchased during 1981
i.... 1915-2586	ISCOR's Rod Invoices to Haggie Rand
j.... 2586a-2593	Invoices for rod from ISCOR for the month of May to Haggie's Germiston factory
k.... 2594	A list of Haggie's monthly 1981 purchases of rod from ISCOR

¹ From a review of these documents the item described in plaintiffs' motion as "Exhibits to Questionnaire Response" at pages 758-1541 of the administrative record appears to be part of the public record.

ADMINISTRATIVE RECORD—Continued

Page	Description
I.... 2595-2715	A computer printout of Haggie's rod purchases
m... 2716	Rod prices breakdown per ton
n.... 2717-2717a	ISCOR's price list for rod
o.... 2718-2722	ISCOR's rod invoices to Haggie

² This document is mispaginated in the third amended index. The correct page number is "1914".

³ This document is mispaginated in the third amended index. The correct page number is "1915".

(Slip Op. 83-55)

**CHEVRON STANDARD LIMITED and CHEVRON CHEMICAL COMPANY,
PLAINTIFFS v. UNITED STATES, DEFENDANT**

Court No. 82-8-01175

Before BOE, Judge.

Order

(Dated June 10, 1983)

BOE, Judge: Upon remand by this court of the above action for further consideration, the Department of Commerce, International Trade Administration, has determined that:

- (1) There have been no Chevron sales at less than fair value from the date of withholding, April 1, 1973, through the date of the last period of Departmental examination, February 8, 1979,
- (2) The appropriate representations have been filed with the Department as required by 19 CFR 353.54, and
- (3) The Department is aware of no other circumstances in respect to Chevron which might prompt the Department not to invoke its revocation discretion at this time

and that, accordingly, a revocation of the finding of dumping insofar as the same relates to Chevron should be issued, now therefore, it is hereby

ORDERED that the Remand Determination made by the Department of Commerce, International Trade Administration, under date of June 1, 1983, be and is hereby affirmed.

(Slip Op. 83-56)

UNITED STATES OF AMERICA, PLAINTIFF v. THEODORE QUINTIN,
DEFENDANT

Court No. 81-9-01320

Before FORD, Judge.

Memorandum and Order

(Dated June 15, 1983)

J. Paul McGrath, Assistant Attorney General; *David M. Cohen*, Director, Commercial Litigation Branch (*Francis J. Sailer*) for the plaintiff.

Theodore Quintin, pro se.

FORD, Judge: Plaintiff instituted this action pursuant to 19 U.S.C. 1592 to enforce a claim for the forfeiture value of merchandise brought into this country from Canada by defendant. Plaintiff's original compliant alleged defendant was liable for damages as a result of fraud. Defendant, by letter dated October 15, 1981, which was deemed an answer (defendant appearing *pro se*) to the complaint replied to all the allegations contained therein. By motion to amend the complaint, plaintiff on April 30, 1982 filed an amended complaint which in addition to the claim contained in the original complaint further claimed damages in the alternative due to gross negligence or negligence.

Plaintiff has now moved pursuant to Rule 55(a) of the Rules of this Court for a default judgment due to failure of defendant to plead or otherwise defend himself.

It is noted that since defendant appeared *pro se*, plaintiff's counsel has graciously supplied copies of the pertinent rules. While defendant did not reply to the amended complaint as is noted, he did reply to the original complaint. The amended complaint merely contains alternative claims for damages.

The rules of this Court under circumstances such as are involved herein, do not require the entry of a default judgment. Rule 8(e) of the Rules of this Court provides as follows:

(e) Effect of Failure to Deny. Averments in a pleading to which a responsive pleading is required, other than those as to the amount of damage, are admitted when not denied in the responsive pleading. Averments in a pleading to which no responsive pleading is required or permitted shall be taken as denied or avoided.

In addition Rule 55(b) reads as follows:

(b) Judgment. Judgment by default may be entered as follows:

In all cases the party entitled to a judgment by default shall apply to the court therefor.

When the plaintiff's claim against a defendant is for a sum certain or for a sum which can by computation be made certain, the court upon request of the plaintiff and upon affidavit of the amount due shall enter judgment for that amount against the defendant, if he has been defaulted for failure to appear and if he is not an infant or incompetent person.

If the party against whom judgment by default is sought has appeared in the action, he (or, if appearing by representative, his representative) shall be served with 10-days written notice of the application for judgment. If, in order to enable the court to enter judgment or to carry it into effect, it is necessary to take an account or to determine the amount of damages or to establish the truth of any averment by evidence or to make an investigation of any other matter, the court may conduct such hearing or order such references as it deems necessary and proper and shall accord a right of trial by jury to the parties when and as required by any statute of the United States.

In view of the foregoing and since the Court is not in a position to determine the basis of damage, i.e. fraud, gross negligence or negligence, it is not in a position to enter a default judgment. Therefore it is hereby

ORDERED that the matter shall be set for trial at a place and date to be determined by Chief Judge Re, pursuant to 28 U.S.C. 256.

(Slip Op. 83-57)

HENSEL, BRUCKMANN & LORBACHER, INC., PLAINTIFF v. UNITED STATES, DEFENDANT

Consol. Court No. 79-12-01861

Before RAO, Judge.

Appraisement of Industrial Sewing Machine Needles

[Judgment for plaintiff.]

(Dated June 15, 1983)

Rode & Qualey (Patrick D. Gill at the trial, John S. Rode with him on the brief) for the plaintiff.

J. Paul McGrath, Assistant Attorney General; Joseph I. Liebman, Attorney in Charge, International Trade Field Office, Commercial Litigation Branch (Saul Davis at the trial and on the brief) for the defendant.

RAO, Judge: This civil action, consolidated with others which embrace similar issues of fact and law, involves the appraisement of industrial sewing machine needles manufactured in West Germany by Ferd. Schmetz, GmbH (Schmetz) and exported to the United States during a period of time from 1975 to 1980. The United States Customs Service (Customs) appraised the merchandise on the basis of foreign value under section 402a(c) of the Tariff Act of 1930, as

amended by the Customs Simplification Act of 1956, at prices contained in home market price lists.

Plaintiff claims that the proper basis of appraisement is export value under section 402a(d) of the Tariff Act of 1930, as amended, *supra*, at prices contained in the Schmetz series 33 export price lists, less 3 percent.

It is undisputed that the merchandise is on the Final List published by the Secretary of the Treasury pursuant to section 6(a) of the Customs Simplification Act of 1956, T.D. 54521, and therefore valuation is governed by the provisions of section 402a of the Tariff Act of 1930, as amended (19 U.S.C. § 1402). The merchandise must be appraised on the basis of foreign value or export value of such or similar merchandise, whichever is higher. Foreign value and export value are defined in section 402a(c) and 402a(d) respectively as follows:

(c) FOREIGN VALUE.—The foreign value of imported merchandise shall be the market value or the price at the time of exportation of such merchandise to the United States, at which such or similar merchandise is freely offered for sale for home consumption to all purchasers in the principal markets of the country from which exported, in the usual wholesale quantities and in the ordinary course of trade, including the cost of all containers and coverings of whatever nature, and all other costs, charges, and expenses incident to placing the merchandise in condition, packed ready for shipment to the United States.

(d) EXPORT VALUE.—The export value of imported merchandise shall be the market value or the price, at the time of exportation of such merchandise to the United States, at which such or similar merchandise is freely offered for sale to all purchasers in the principal markets of the country from which exported, in the usual wholesale quantities and in the ordinary course of trade, for exportation to the United States, plus, when not included in such price, the cost of all containers and coverings of whatever nature, and all other costs, charges, and expenses incident to placing the merchandise in condition, packed ready for shipment to the United States.

The statute requires that, if possible, the foreign and export values for the imported merchandise be ascertained and that if there is no foreign or export value for such merchandise, the foreign and export values of similar merchandise be ascertained, and the higher of these values be used in the valuation of the merchandise.

The question for this Court becomes whether a foreign value for the merchandise exists that is higher than its export value, and if not, whether there is a foreign value for similar merchandise that is higher than export value.

Plaintiff maintains that foreign value for the merchandise does not exist at the home market prices used by Customs to appraise

the industrial sewing machine needles. During the period of exportation to the United States, those prices were not freely offered to all purchasers in West Germany in the usual wholesale quantities as there were restrictions on the sales made at these prices, according to the plaintiff. These restrictions included a program of resale price maintenance, restricted sales to selected quantity purchasers and sales through a territorial dealership network of distribution.

Plaintiff introduced evidence and adduced the testimony of witnesses which tended to establish that Schmetz is the largest producer of industrial sewing machine needles in West Germany. It sells directly to manufacturers of sewing machines in West Germany, and also to preferred customers, i.e. factories which use industrial grade sewing machine needles in large quantities. These customers receive various discounts from the home market price list prices.

Other sales are made through a network of dealers who in turn sell to end users at the price list prices. The discount to the dealers represents their profit. Occasionally, orders by end users of this type of merchandise are placed directly with Schmetz. Schmetz discourages this practice by sending a form letter acknowledging the order and stating that the order will be processed through a dealer. These sales involve smaller quantities than those to the dealers, the preferred manufacturers and the sewing machine manufacturers. The network of dealers was set up by Schmetz and is controlled by it, and the sales from the dealers to the consumers are in the ordinary course of business.

It is plaintiff's position that the sales to end users are restricted in that they must be consummated through the territorial dealers. It is also plaintiff's position that the sales to the dealers are restricted in that these sales are controlled by Schmetz in that it sells only to selected purchasers, that is, its selected territorial dealers rather than to all dealers or distributors who wish to purchase.

As to the sales to manufacturers of sewing machines and to the preferred manufacturers, it has been held by this Court that sales in the home market to purchasers who contract for large quantities are not sales made in the usual course of business and that they do not constitute a free offering to all purchasers. *Victor Animatograph Corp. v. United States*, 2 Cust. Ct. 954, R.D. 4577 (1939). Therefore, these sales should be disregarded in determining whether a foreign value for the merchandise exists.

Where merchandise is offered for sale by the manufacturer to selected purchasers only, or through exclusive agents, the market is restricted, and such sales may not be considered in determining dutiable value. *Hulse Import Co. v. United States*, 29 Cust. Ct. 504, R.D. 8181 (1952). Thus, the sales to the dealers should not be considered in determining whether a foreign value exists. This leaves only those sales to end users which are orders of small quantities

based on the purchaser's needs which cannot be readily supplied or satisfied by the dealers. Although defendant has introduced into evidence a chart depicting that 24 percent of the sales by Schmetz as being to end users, the statistics are given by the number of orders, rather than in terms of quantities of industrial sewing machine needles sold or the value of the sales. The letters submitted by plaintiff in which orders directly from the small end users are referred to territorial dealers indicate that these orders were for less than the usual wholesale quantities, which defendant has conceded to be 1,000 needles. Therefore, these sales, being in less than the usual wholesale quantities, should not be considered in determining whether foreign value of such merchandise exists.

Since plaintiff has established that all of the sales of the merchandise in the home market in the usual wholesale quantities are restricted for the period under consideration, there is no foreign value for the merchandise.

It remains to be determined, however, whether a foreign value existed for "similar" merchandise in the home market between 1975 and 1980. There are two other manufacturers of industrial sewing machine needles in West Germany besides Schmetz—Leo Lammertz Nadelfabrik (Lammertz) and the Singer Company. The parties have agreed that the Singer Company did not freely offer similar merchandise for sale in West Germany during the relevant period of time, so only the merchandise manufactured by Lammertz during 1975 to 1980 need be considered in determining whether a foreign value existed for similar merchandise.

Plaintiff introduced evidence by way of affidavits tending to establish that Lammertz utilized a network of dealers similar to that employed by Schmetz and that these dealers were controlled by Lammertz in much the same way that Schmetz controlled its dealers, that is, restrictions as to sales territories and resale prices. Accordingly, plaintiff has established a *prima facie* case that similar merchandise is not freely offered in the home market to all who wish to purchase in the usual wholesale quantities in the principal markets of the country of export.

Defendant's case in rebuttal consists in a large measure on reliance on the assumption of correctness which attaches to the actions of the appropriate Customs officer, and in an attempt to discredit the affidavits submitted by the plaintiff. It attempted to exclude them from being introduced into evidence, citing its right to cross-examination of witnesses at trial. It takes the position that plaintiff did not demonstrate that the attendance at the trial of the deponents could not reasonably have been had. However, 28 U.S.C. § 2635(b) accords the trial court the discretion to admit or preclude affidavit testimony where the attendance of the deponents cannot reasonably be had and the weight to be given to such evidence is a matter for the court.

The averments of the various affidavits introduced by the plaintiff were not rebutted by evidence introduced by the defendant, and to the extent that they established that both Schmetz and Lamermert controlled the territorial dealers as to resale prices, geographical areas of distribution and other matters, absent testimony or other affidavits to the contrary, the Court gives them probative weight, and concludes that foreign value for similar merchandise did not exist in the home market during the period of time between 1975 and 1980.

Plaintiff makes an additional claim for interest pursuant to 28 U.S.C. § 2644 which provides that if, in a civil action commenced in this court on or after November 1, 1980, the plaintiff obtains monetary relief by judgment or stipulation agreement, interest shall be allowed from the date of the filing of the summons in the action to the date of the refund. The amount of the interest allowed is at the rate established under section 6621 of the Internal Revenue Code of 1954.

Court Number 80-11-00076, consolidated with this action, was filed after the date specified, *supra*, having been filed on November 21, 1980 and plaintiff duly made its demand for interest. The calculation of the interest payable to the plaintiff by the appropriate Customs officials responsible for determining the amount of the interest to be paid upon reliquidation should be made with reference to the date of filing.

Plaintiff also makes a claim that domestic needles involved in Court No. 79-12-01908 were appraised on the basis of foreign value and that defendant has conceded that these appraisements were erroneous and that they should have been appraised in accordance with the 33/75 list prices. It is adjudged that these domestic needles should have been appraised on the basis of export value, at those prices.

Let judgment enter accordingly.

Decisions of the United States Court of International Trade

Abstracts

Abstracted Protest Decisions

DEPARTMENT OF THE TREASURY, June 16, 1983.

The following abstracts of decisions of the United States Court of International Trade at New York are published for the information and guidance of officers of the Customs and others concerned. Although the decisions are not of sufficient general interest to print in full, the summary herein given will be of assistance to Customs officials in easily locating cases and tracing important facts.

WILLIAM VON RAAB,
Commissioner of Customs.

DECISIONS OF THE U.S. COURT OF INTERNATIONAL TRADE

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
P83/159	Re, C.J. June 10, 1983	Mattel, Inc.	72-8-01750	Item 737.90/807.00 24% with allowance for cost of U.S. phonograph records	Item 724.25 7% upon full value of imported articles including dutiable costs attributable to assembly and packaging less cost or value of U.S. phonograph records	Mattel, Inc. v. U.S. (C.D. 4805) and Mattel, Inc. v. Mattel, Inc. (C.A.D. 1248)	Los Angeles American goods returned; articles assembled abroad in part of U.S. fabricated components; phonograph records
P83/160	Re, C.J. June 10, 1983	Mattel, Inc.	72-11-02423	Item 737.90/807.00 21% with allowance for cost of U.S. phonograph records	Item 724.25 6% upon full value of imported articles including dutiable costs attributable to assembly and packaging less cost or value of U.S. phonograph records	Mattel, Inc. v. U.S. (C.D. 4805) and Mattel, Inc. v. Mattel, Inc. (C.A.D. 1248)	Los Angeles American goods returned; articles assembled abroad in part of U.S. fabricated components; phonograph records
P83/161	Re, C.J. June 10, 1983	Mattel, Inc.	72-11-02424	Item 737.90/807.00 21% with allowance for cost of U.S. phonograph records	Item 724.25 6% upon full value of imported articles including dutiable costs attributable to assembly and packaging less cost or value of U.S. phonograph records	Mattel, Inc. v. U.S. (C.D. 4805) and Mattel, Inc. v. Mattel, Inc. (C.A.D. 1248)	Los Angeles American goods returned; articles assembled abroad in part of U.S. fabricated components; phonograph records

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED Item No. and Rate	HELD Item No. and Rate	BASIS	PORt OF ENTRY AND MERCHANTISE
P83/162	Re, C.J. June 10, 1983	Mattel, Inc.	72-11-02425	Item 737.90/807.00 24% upon full allowance for cost of U.S. phonograph records	Item 724.25 7% upon full value of imported articles including dutiable costs attributable to assembly and packaging less cost or value of U.S. phonograph records	Mattel, Inc. v. U.S. (C.D. 4805) and Mattel, Inc. v. U.S.; U.S. v. Mattel, Inc. (C.A.D. 1248)	Los Angeles American goods returned; ar- ticles assembled abroad in part of U.S. fabricated com- ponents; phonograph records
P83/163	Re, C.J. June 10, 1983	Mattel, Inc.	72-11-02426	Item 737.90/807.00 24% upon full allowance for cost of U.S. phonograph records	Item 724.25/807.00 7% upon full value of imported articles including dutiable costs attributable to assembly and packaging less cost or value of U.S. phonograph records	Mattel, Inc. v. U.S. (C.D. 4805) and Mattel, Inc. v. U.S.; U.S. v. Mattel, Inc. (C.A.D. 1248)	Los Angeles American goods returned; ar- ticles assembled abroad in part of U.S. fabricated com- ponents; phonograph records
P83/164	Re, C.J. June 10, 1983	Mattel, Inc.	73-4-01093	Item 737.90 21% without allowance under item 807.00	Item 724.25/807.00 6% upon full value of imported articles including dutiable costs attributable to assembly and packaging less cost or value of U.S. phonograph records	Mattel, Inc. v. U.S. (C.D. 4805) and Mattel, Inc. v. U.S.; U.S. v. Mattel, Inc. (C.A.D. 1248)	Los Angeles American goods returned; ar- ticles assembled abroad in part of U.S. fabricated com- ponents; phonograph records

P88/165	Mattel, Inc.	Re, C.J. June 10, 1983	73-4-01096	Item 737.90/807.00 21% with allowance for cost of U.S. phonograph records	Item 724.25/807.00 6% upon full value of imported articles including dutiable costs attributable to assembly and packaging less cost or value of U.S. phonograph records	Mattel, Inc. v. U.S. (C.D. 4805) and Mattel, Inc. v. U.S.; U.S. v. Mattel, Inc. (C.A.D. 1248)	Los Angeles American goods returned; ar- ticles assembled abroad in part of U.S. fabricated com- ponents; phonograph records
P88/166	Mattel, Inc.	Re, C.J. June 10, 1983	73-4-01098	Item 737.90/807.00 21% with allowance for cost of U.S. phonograph records	Item 724.25/807.00 6% upon full value of imported articles including dutiable costs attributable to assembly and packaging less cost or value of U.S. phonograph records	Mattel, Inc. v. U.S. (C.D. 4805) and Mattel, Inc. v. U.S.; U.S. v. Mattel, Inc. (C.A.D. 1248)	Los Angeles American goods returned; ar- ticles assembled abroad in part of U.S. fabricated com- ponents; phonograph records
P88/167	Mattel, Inc.	Re, C.J. June 10, 1983	73-7-01663	Item 737.90/807.00 20% with allowance for cost of U.S. phonograph records	Item 724.25/807.00 7% upon full value of imported articles including dutiable costs attributable to assembly and packaging less cost or value of U.S. phonograph records	Mattel, Inc. v. U.S. (C.D. 4805) and Mattel, Inc. v. U.S.; U.S. v. Mattel, Inc. (C.A.D. 1248)	Los Angeles American goods returned; ar- ticles assembled abroad in part of U.S. fabricated com- ponents; phonograph records

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED Item No. and Rate	HELD Item No. and Rate	BASIS	PORT OF ENTRY AND MERCHANDISE
P83/168	Re. C.J. June 10, 1983	Mattel, Inc.	73-3-402732	Item 737.90/807.00 21% with allowance for cost of U.S. phonograph records	Item 724.25/807.00 6% upon full value of imported articles including dutiable costs attributable to assembly and packaging less cost or value of U.S. phonograph records	MatTEL, INC. v. U.S. (C.D. 4805) and Mattel, Inc. v. U.S.; U.S. v. Mattel, Inc. (C.A.D. 1248)	Los Angeles American goods returned; articles assembled abroad in part of U.S. fabricated components; phonograph records
P83/169	Re. C.J. June 10, 1983	Mattel, Inc.	74-4-01031	Item 737.90/807.00 21% with allowance for cost of U.S. phonograph records	Item 724.25/807.00 6% upon full value of imported articles including dutiable costs attributable to assembly and packaging less cost or value of U.S. phonograph records	MatTEL, INC. v. U.S. (C.D. 4805) and Mattel, Inc. v. U.S.; U.S. v. Mattel, Inc. (C.A.D. 1248)	Los Angeles American goods returned; articles assembled abroad in part of U.S. fabricated components; phonograph records

P83/170	Re. C.J. June 10, 1983	Mattel, Inc.	74-4-01032	Item 737.90 17.5% Item 774.60 8.5% Item 750.25 19% Item 770.40 6% Without allowance under item 807.00	Item 807.00 and 737.90, 774.60, 750.25, 770.40, 17.5%, 8.5%, 19%, 6% with cost or value of U.S. fabricated components deducted from full appraised value of imported articles into which they were assembled	Mattel, Inc. v. U.S. (C.A.D. 1248)	Los Angeles American goods returned; ar- ticles assembled abroad in part of U.S. fabricated com- ponents; phonograph records
P83/171	Re. C.J. June 10, 1983	Mattel, Inc.	74-11-03192	Item 737.90 17.5% without allowance under item 807.00	Item 724.25/807.00 5% upon full value of imported articles including dutiable costs attributable to assembly and packaging less cost or value of U.S. phonograph records	Mattel, Inc. v. U.S. (C.D. 4865) and Mattel, Inc. v. U.S., U.S. v. Mattel, Inc. (C.A.D. 1248)	Los Angeles American goods returned; U.S. fabricated components involved as rubber bands, etc., assembled abroad into articles
P83/172	Re. C.J. June 10, 1983	Mattel, Inc.	75-5-01233	Item 737.90 17.5% without allowance for cost or value of U.S. phonograph records	Item 724.25/807.00 5% upon full value of imported articles including dutiable costs attributable to assembly and packaging less cost or value of U.S. phonograph records	Mattel, Inc. v. U.S. (C.D. 4865) and Mattel, Inc. v. U.S., U.S. v. Mattel, Inc. (C.A.D. 1248)	Los Angeles American goods returned; titles assembled abroad in part of U.S. fabricated com- ponents; phonograph records

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
P88/173	Re, C.J. June 10, 1983	Mattel, Inc.	75-10-02627	Item 737.90 17.5% without allowance for cost or value of U.S. phonograph records	Item 724.25/607.00 5% upon full value of imported articles including dutiable costs attributable to assembly and packaging less cost or value of U.S. phonograph records	Mattel, Inc. v. U.S. (C.D. 4805) and Mattel, Inc. v. Mattel, Inc. (C.A.D. 1248)	Los Angeles American goods returned; articles assembled abroad in part of U.S. fabricated components; phonograph records
P89/174	Ford, J. June 10, 1983	Cost Plus	79-2-00185	Item 386.09 25¢ per lb. + 15%	Item 706.24 20%	U.S. v. J.E. Maniye and Sons No. 81-6 11/19/81	San Francisco Handbags
P89/175	Ford, J. June 10, 1983	RCA Corp.	81-9-01149	Item 685.40 5.56% or 5.3% (video cassette recorder)	Item 685.40 5.56% or 5.3% (video cassette recorder)	Texas Instruments, Inc. v. U.S. (CIT 236 (1981)) aff'd 3/25/82	Los Angeles Video cassette recorders which contain digital clock timers; entireties
P89/176	Ford, J. June 10, 1983	Royal Cathay Trading	81-9-01325	Item 720.18 \$1.125 each + 16% (digital clock/timer)	Item 706.24 20%	U.S. v. J.E. Maniye and Sons No. 81-6 11/19/81	San Francisco Handbags

P83/177	Ford, J. June 10, 1983	White Swan Uniforms, Inc.	White Swan Uniforms, etc.	80-12-00091, Items 382.04, 382.78 or 382.81 without allowance under item 807.00	Item 807.00 and 382.04, 382.78 or 382.81 Various rates with cost or value of components deducted by Customs Service on liquidation and less cost or value as set forth on "Constructed Value Statements" and print-out of "tucked" fabric values of "tucked" and/or "buttonholed" textile fabric panels of imported garments	White Swan Uniforms, Inc. v. U.S. Abs. P82/137 (1982) Miami Not stated
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DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
P83/178	Watson, J. June 10, 1983	Standard Surplus Sales, Inc.	71-8-00961, etc.	Item 389.60 or 386.62 25¢ per lb. + 24%-, 21%, 18% or 15%	Item 735.20 18%, 16%, 14%, 12%, or 10%	Standard Surplus Sales, Inc. v. U.S. IGT 119 (1981) and U.S. v. Standard Surplus Sales, Inc. 69 CCPA—1981)	Los Angeles Nylon shoulder straps, etc.
P83/179	Boe, J. June 10, 1983	Interpar-Div. of Dart In- dustries, Inc.	82-5-00788	Merchandise separately classified under items 715.05, 716.18, 720.24, etc. and assessed with duty at various rates with allowance for cost of U.S. components under Item	Item 688.36/807.00 5.1% upon full value of imported articles less cost or value of U.S. components	Texas Instruments, Inc. v. U.S. (C.A.D. 1244) and U.S. v. Texas Instruments Inc. No. 82-28 (1982)	Chicago American goods returned; ar- ticles assembled abroad in part of U.S. fabricated com- ponents; electronic watches

P83/180	Boe, J. June 14, 1983	Integrated Circuits Pack-aging	81-10-01365	Item 720.14 33.4¢ each plus 16%	Item 688.36 5.5%	U.S. v. Texas Instruments, Inc., No. 81-23 (CCPA 3/25/82)	San Francisco Timing modules
P83/181	Boe, J. June 14, 1983	J.C. Penney Purchasing Corp.	81-10-01471	Merchandise separately classified under items 716.18, 720.02, 720.16 and 720.18 and assessed with duty at various rates (merchandise marked "A", "B", "C" or "D")	Item 678.50 4.7% (merchandise marked "A") Item 684.30 4% (merchandise marked "B") Item 685.40 5.3% (merchandise marked "C") Item A88.45 Free of duty pursuant to GSP (merchandise marked "D")	Texas Instruments, Inc. v. U.S. I.C.I.T. 236 (1981), aff'd 3/25/82	San Francisco Solid state timing devices; entirety with article in which incorporated (merchandise marked "A", "B", "C", or "D")
P83/182	Boe, J. June 14, 1983	J.C. Penney Purchasing Corp.	81-11-01579	Merchandise separately classified under items 716.18, 720.02, and 720.18 and assessed with duty at various rates (merchandise marked "A", and "B")	Item 685.40 5.3% (merchandise marked "A") Item 688.45 Free of duty pursuant to GSP (merchandise marked "B")	Texas Instruments, Inc. v. U.S. I.C.I.T. 236 (1981), aff'd 3/25/82	San Francisco Solid state timing devices; entirety with article in which incorporated (merchandise marked "A" and "B")

Decisions of the United States Court of International Trade

Abstracts

Abstracted Reappraisement Decisions

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	BASIS OF VALUATION	HELD VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
R83/485	Re. C. J. June 10, 1983	Mitsubishi Corp.	International 78-5-00788	Export value	Appraised values shown on entry papers less additions included to reflect currency revaluation	C.B.S. Imports Corp. v. U.S. (C.D. 4739)	New York Not stated
R83/486	Re. C. J. June 10, 1983	Mitsui & Co. (USA), Inc.	73-3-00683	Export value	Appraised values shown on entry papers less additions included to reflect currency revaluation	C.B.S. Imports Corp. v. U.S. (C.D. 4739)	Philadelphia Not stated

R83/487	Re. C. J. June 10, 1983	Mitsui & Co. (USA), Inc.	75-4-09866, etc.	Export value	Appraised values shown on entry papers less additions included to reflect currency revaluation	C.B.S. Imports Corp. v. U.S. (C.D. 4739)	New York Not stated
R83/488	Ford, J. June 10, 1983	Dana Perfumes Corp.	75-12-08313	Cost of production merchandise described as items nos. 8296, 8227, 8228 and 8244 on invoices covered by entries and protests)	Amounts for material, labor, fabrication costs and general expenses incurred for export to U.S. included in invoice prices, plus a profit percentage of either 84.66% (1970), 63.58% (1971), 51.75% (1971), 51.75% (1972) or 28.28572% (1973) depending upon dates of exportation indicated, plus export packing merchandise described as item nos. 8226, etc.)	Agreed statement of facts New York Canoe Cologne, etc.	

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	BASIS OF VALUATION	HELD VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
R88/489	Watson, J. June 10, 1983	Aircargo Brokerage Co., et al.	R58/20945, etc.	Export value	Amounts for material and labor costs incurred for export to U.S. included in invoice prices, plus usual general expenses and profit percentage of either 59.03% (1970), 49.673% (1971), 40.673% (1972) or 12.2845% (1973), depending upon date of exportation indicated plus export packing merchandise described as item nos. R714, etc.)	F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit prices and appraised value	Miami Binoculars Agreed statement of facts

				New York Electrical instruments and ac- cessories
R83/490	Landis, J. June 14, 1983	Perkin Elmer Corp.	79-5-00835 Export value	Agreed statement of facts Invoice unit prices, net, packed representing correct dutiable values—said prices represent exporter's list prices less 35% discount
R83/491	Landis, J. June 14, 1983	Perkin Elmer Corp.	79-6-01067 Export value	Agreed statement of facts Invoice unit prices, net, packed representing correct dutiable values—said prices represent exporter's list prices less 35% discount

Appeals to U.S. Court of Appeals for the Federal Circuit

APPEAL 83-1086—Bally-Midway Mfg. Co. v. The Honorable Donald T. Regan, Secretary of the Treasury and Honorable William Von Raab, Commissioner of Customs—28 U.S.C. 1581 (i) RESIDUAL—Appeal from Slip-Op. 83-51 filed May 27, 1983.

APPEAL 83-1100—Miodrag Nikolic v. United States—Customhouse Broker's License—Appeal from Slip-Op. 83-26 Filed on June 1, 1983.

Index

U.S. Customs Service

Treasury decisions:	T.D. No.
Carrier bonds.....	83-140
Tarrif rate quota-Tuna Fish	83-142
Temporary importations under bond, foreign railroad equipment.....	83-141

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